No. 94-66 and No. 94-82

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MIKE MOORE, *et al.*,

Appellants,

vs.

JOHNNY DUPREE, *et al.*,

Appellees.

THE LAMAR COUNTY BOARD OF EDUCATION AND TRUSTEES, *et al.*,

Appellants,

vs.

JOHNNY DUPREE, *et al.*,

Appellees.

On Appeal From
The United States District Court
For The Southern District of Mississippi

MOTION TO AFFIRM

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QUESTIONS PRESENTED

Whether the District Court properly applied Clark vs. Roemer, 500 U.S. 646 (1991), in holding that the Attorney General did not preclear under § 5 of the Voting Rights Act a voting change that the State of Mississippi failed to identify with specificity in its submission of other voting changes.

Whether the District Court properly exercised its remedial powers in a § 5 action by enjoining the enforcement of an unprecleared law until the State complied with the Voting Rights Act.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

MOTION TO AFFIRM 1

STATEMENT OF THE FACTS 2

ARGUMENT 11

A. The District Court's interpretation of § 5 of the Voting Rights Act is consistent with decisions of the Court and the objectives of the Act. 11

B. The remedy imposed by the District Court for the violation of § 5 is consistent with the Court's precedent and the purposes of the Voting Rights Act. 17

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES

Allen vs. State Bd. of Elections,
393 U.S. 544 (1969) 12, 15, 18

Berry vs. Doles,
438 U.S. 190 (1978) 18

City of Rome vs. United States,
446 U.S. 156 (1980) 12

Clark vs. Roemer,
500 U.S. 646 (1991) . . . . i, 4, 10-15, 17, 19, 21

Dougherty County Bd. of Educ. vs. White,
439 U.S. 32 (1978) 18

Dupree vs. Mabus,
776 F. Supp. 290 (S.D. Miss. 1991) . 2-4, 10, 14

Dupree vs. Moore,
831 F. Supp. 1310 (S.D. Miss. 1992) . . 2, 4, 10, 11, 13, 19-21

Georgia vs. United States,
411 U.S. 526 (1973) 16-18

Greenville Public School Dist. vs.
Western Line Public School Dist.,
575 So. 2d 956 (Miss. 1990) 20

Hathorn vs. Lovorn,
457 U.S. 255 (1982) 20

McCain vs. Lybrand,
465 U.S. 236 (1984) 12, 13, 15, 18

McDaniel vs. Sanchez,
452 U.S. 130 (1981) 20

Morris vs. Gressette,
432 U.S. 491 (1977) 16

Perkins vs. Matthews,
400 U.S. 379 (1971) 18

United States vs. Board of Comm'rs,
435 U.S. 110 (1978) 12

STATUTES

Miss. Code Ann. § 21-1-59 . . . . . 2, 3

Miss. Code Ann. § 37-5-1 4

Miss. Code Ann. § 37-5-3 4

Miss. Code Ann. § 37-7-611 . . . 2-5, 7-11, 13, 14, 17, 19-21

Miss. Code Ann. § 37-57-105 19

Miss. Code Ann. § 37-7-103 . . . . . 5, 7, 13, 14, 20

Voting Rights Act of 1965, § 5,
42 U.S.C. § 1973c . . . . . i, 3, 8, 9, 11, 12, 17

OTHER

28 C.F.R. § 51.25 6

28 C.F.R. § 51.35 16

Fed. R. Civ. P. 59 4

Fed. R. Civ. P. 62 4

Sup. Ct. R. 18.6 1

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MOTION TO AFFIRM

Pursuant to Rule 18.6, the Appellees move to affirm the order of the District Court because the questions are so insubstantial that further argument is unnecessary. The

District Court's decision is based on well-established precedent and presents no conflict or issue of statutory interpretation that requires resolution by the Court.

STATEMENT OF THE FACTS

Since 1926, Mississippi law has required that the boundaries of a city school district be, at a minimum, coterminous with its parent city. Thus, the residents of the city were always residents of the city school district. These residents elect the city council, which in turn appoints the members of the school board for the city school district. The State of Mississippi attempted to change this policy in 1986 by repealing Miss. Code Ann. § 37-7-611, which provides that when a city annexes territory the boundaries of the city school district automatically expand to encompass the territory annexed by its parent city.[1]

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[1] In 1977 and 1978, the State of Mississippi attempted to create an exception to § 37-7-611 by amending Miss. Code Ann. § 21-1-59. These amendments provided that extension by annexation of a city's boundaries across a county line would not affect the boundaries of the adjacent county school district unless the county school district consented to allow the annexed area to be included in the city school district. J.S. App. 5a-6a.

In 1991, the District Court granted summary judgment in favor of the Appellees on their claim that the 1977 and 1978 amendments to § 21-1-59 are not enforceable because they were never precleared by the Attorney General. Dupree vs. Mabus, 776 F. Supp. 290, 303-04 (S.D. Miss. 1991) (Dupree I), vacated and remanded on other grounds sub. nom, Dupree vs. Moore, ___ U.S. ___, 117 L.Ed. 2d 609 (1992). No cross-appeal of this portion of the District

As a result of the repeal of § 37-7-611, the residents of an area annexed by the city would not necessarily be residents of the city school district; they could remain residents of the county, or suburban, school district. This fundamental alteration of the long standing policy in Mississippi created the anomaly of the newly annexed residents continuing to elect directly the board members of their county, or suburban, school district, while indirectly selecting the board members of the city school district by participating in city council elections.

The repeal of § 37-7-611, as well as the amendments to § 21-1-59, limited the expansion of the Hattiesburg School District when its parent city expanded by annexation into neighboring Lamar County in 1979, 1981, 1982, 1985 and 1989 and into Forrest County, where the City of Hattiesburg is primarily located, in 1989. Because of these laws, the Hattiesburg School District did not expand to include the suburban property annexed by the City.

The State of Mississippi enforced these laws despite not gaining preclearance as required by the Voting Rights Act. In February 1990, the Appellees, individually as residents and registered voters of the City of Hattiesburg and in their official capacities as members of the school board of the Hattiesburg School District, filed this action under § 5 of the Voting Rights Act against the State of Mississippi. The

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Court's judgment in Dupree I was filed. As the Appellants now concede, no issue related to the enforceability of the amendments to § 21-1-59 is before the Court. No. 94-66 J.S. p.9 n.7

Appellees sought declaratory and injunctive relief to halt enforcement of the laws.[2]

In its first opinion in this litigation, the District Court held that the repealer of § 37-7-611 had been properly submitted to and precleared by the Attorney General in 1986. Dupree vs. Mabus, 776 F. Supp. 290, 303 (S.D. Miss. 1991) (Dupree I), vacated and remanded sub. nom, Dupree vs. Moore, ___ U.S. ___, 117 L. Ed. 2d 609 (1992). The Court vacated Dupree I and remanded for reconsideration in light of Clark vs. Roemer, 500 U.S. 646 (1991).

On remand, the District Court held that, when measured by the principles outlined in Clark, the repealer of § 37-7-611 had not been precleared. The State did not specifically identify the voting change effected by the repealer in its 1986 submission of other voting changes. Dupree vs. Moore, 831 F. Supp. 1310, 1317 (S.D. Miss. 1993) (Dupree II), appeal dismissed, ___ U.S. ___, 127 L.Ed 2d 69 (1994).

After the District Court issued Dupree II, the Appellants filed joint motions under Fed. R. Civ. P. 59 to alter or amend, for a new trial and for a remedy, and under Fed. R. Civ. P. 62 for a stay pending appeal. Before the District Court ruled on these motions, the Appellants filed an appeal to this Court. The District Court denied the Rule 62 motion on October 29, 1993, and withheld ruling on the

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[2] After the three-judge court convened, the Lamar County and Forrest County school districts and their school boards intervened as Defendants. In both school districts, board members are elected directly by the residents of the county school district. Miss. Code Ann. §§ 37-5-1, -3.

Rule 59 motions pending resolution of the appeal. The Court dismissed the appeal for lack of jurisdiction on January 18, 1994, and the District Court denied the Rule 59 motions on April 13, 1994. J.S. App. 1a, 77a.

The focus of this appeal--the status of the repealer of § 37-7-611--requires a review of the submission histories of the Uniform School Law and the repealer of § 37-7-611. In 1986, the Mississippi Legislature passed the Uniform School Law, a sweeping act affecting a wide range of topics. This Law consisted of 203 sections and repealed, enacted or amended more than 300 separate statutes. Section 47 of the Uniform School Law repealed § 37-7-611 and twenty-two other statutes that dealt with "the creation and operation of municipal separate school districts." J.S. App. 121a.

Section 52 of the Uniform School Law amended Miss. Code Ann. § 37-7-103. Prior to 1986, § 37-7-103 permitted a county board of education to abolish the boundaries of any school district in the county except a city school district. With the consent of the city school district, the county board of education could add to the city school district any part of the county adjoining the city school district or detach territory from the city school district and merge it into the county school system. Section 37-7-103 now provides that any school district has authority to alter its boundaries by agreement with an adjoining district. J.S. App. 122a-123a.

The State submitted the Uniform School Law to the Attorney General for preclearance on July 22, 1986. J.S. App. 78a. The submission consisted of a one-page cover letter, a thirteen-page document containing information arranged in accordance with the Department of Justice regulations governing § 5 submissions and a 467-page

looseleaf booklet titled "Senate Bill 2117 - Comparison of Current Law and New Law," which contained the typed version of the bill interspersed with photocopied pages of the then-current statute amended by particular sections of the Uniform School Law. J.S. App. 93a-152a.[3]

In 1986, § 51.25(a) of the regulations governing § 5 submissions to the Attorney General required that a copy of the enactment embodying the voting change be provided. J.S. App. 224a. In addition, § 51.25(b) stated that if the voting change was not "readily apparent on the face of the document provided under" § 51.25(a), the submission must contain "a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and

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[3] The one-paragraph "Introductory Note" to the looseleaf booklet states that it provides "on a section by section basis each section of the current law which has been amended followed by each individual section of" the Uniform School Law. Thus, the State did not attempt to provide the Attorney General with a comparison of the prior law with the proposed law if the prior law was repealed. The Note also indicates that if a section of the Law creates "new law then only those particular sections will be denoted with no comparison of current law." The Note further stated that "[t]his section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law." The Note concludes as follows: "By comparing each section of [the Uniform School Law] and the current practice, the changes to current law are easily identified." By the State's own admission, however, these comparisons were made only for statutes amended by the Law. J.S. App. 93a.

proposed situation with respect to voting." J.S. App. 224a. The regulations did not require the submitting jurisdiction to provide a copy of the prior law being repealed or amended.

The State characterized its submission as follows:

> This submission is cited as the "Mississippi Uniform School Law of 1986" and is submitted to the Attorney General of the United States in its entirety. For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review. [J.S. App. 81a.]

The State specifically identified thirteen of the 203 sections of the Uniform School Law. J.S. App. 81a-87a. Section 47, which repealed § 37-7-611, was neither identified nor referred to anywhere in the thirteen-page submission. The brief text of § 47 does appear, without explanatory comment by the State, in a copy of the Uniform School Law and the looseleaf booklet supplied to the Attorney General. J.S. App. 121a. Section 52, which amended § 37-7-103, was one of the thirteen sections specifically identified and discussed in the submission. J.S. App. 83a.

The discussion of § 52 in the State's submission consisted of a paraphrase of the then-current statute and the amended version but made no mention of § 47 or § 37-7-611. The analysis of § 52 did not refer in any way to the State's longstanding policy, reflected in § 37-7-611, of automatically extending a city school district's boundaries after an annexation by its parent city. The State did not say, or even suggest, that § 52 was designed to replace the policy reflected in § 37-7-611.

The Attorney General responded to the State's submission on August 29, 1986. He did "not interpose any objection to the voting changes occasioned by [the Uniform School Law], as identified in your July 22, 1986, letter." J.S. App. 156a (emphasis added). The voting change effected by the repeal of § 37-7-611 was not specifically identified in the submission and was not precleared. The State acknowledged that the status of § 37-7-611 remained unclear after the Attorney General's response, J.S. App. 191a, and conceded in the District Court that the State's July 1986 submission contributed to the uncertainty. Memorandum in Support of State Defendants' Motion to Dismiss, p.8.

In formal recognition of the absence of preclearance, the State submitted § 47 to the Attorney General on December 30, 1987. J.S. App. 158a. In its submission of § 47, the State acknowledged that the entire Uniform School Law was not precleared by the Attorney General. See, e.g, J.S. App. 161a ("The major part of [the Uniform School Law], as it deals with the Voting Rights Act . . . has already been precleared."); J.S. App. 164a ("[M]ost of" the Uniform School Law has "already been precleared by the "Justice Department.); J.S. App. 164a ("[S]ubstantive parts of" the Uniform School Law were "precleared by the Justice Department.").

On January 27, 1989, the State responded to the Attorney General's request for additional information concerning the repeal of § 37-7-611. The State again acknowledged that the Uniform School Law had not been precleared in its entirety in 1986. Moreover, the State expressly represented that § 47 had not been specifically identified in the earlier submission of the Uniform School Law:

> On July 22, 1986, the State of Mississippi submitted [the Uniform School Law] for preclearance under Section 5 of the Voting Rights Act. On August 29, 1986, [the Uniform School Law] was precleared under Section 5 as to the particular sections identified in our July 22, 1986 submission.
>
> On December 30, 1987, the State of Mississippi submitted [the repealer of § 37-7-611] since [it] was not specifically identified in our original submission. [J.S. App. 174a (emphasis added).]

The Attorney General interposed an objection to the repeal of § 37-7-611 on March 31, 1989.[4]

On January 12, 1990, the State sought reconsideration of the Attorney General's limited preclearance of the Uniform School Law or, alternatively, the objection interposed to the repeal of § 37-7-611. J.S. App. 187a. The State contended for the first time that the entire Uniform School Law had been submitted and precleared in 1986. J.S. App. 189a-193a. On May 25, 1990, the Attorney

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[4] The Attorney General concluded the repeal of § 37-7-611 would likely "create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board." The State did not provide a rationale for the creation "of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters." J.S. App. 183a.

General rejected the State's position because it "appear[ed] to seriously misconstrue the structure, purpose, and history of the preclearance requirement." J.S. App. 218a. Section 5 "plainly fixes the responsibility for identifying voting changes on the state, not the . . . Attorney General. [Y]et the state appears to be arguing . . . that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made." J.S. App. 219a.

In Dupree I, the District Court concluded the 1986 repealer of § 37-7-611 had been adequately identified in the State's submission of the Uniform School Law and, therefore, precleared by the Attorney General when he did not interpose an objection within 60 days. J.S. App. 63a-71a. The Appellees in this appeal filed an appeal of that portion of the District Court's judgment in Dupree I. The Court vacated and remanded Dupree I in light of its decision in Clark vs. Roemer, 500 U.S. 646 (1991), which emphasized a state's obligation to identify with specificity each voting change for which it seeks preclearance. On remand, the District Court ruled in Dupree II that

> Mississippi's 1986 submission is precisely that circumstance condemned by Clark vs. Roemer. Should this court permit Mississippi to submit a haystack of documents and obligate the Attorney General to painstakingly search for any voting change needle, as Mississippi has done here, this court would be ignoring Clark's clear pronouncement that a State must "identify with specificity each change that it wishes the Attorney General to consider" in a § 5 submission.

J.S. App. 22a. As a result, the District Court held the repealer of § 37-7-611 to be ineffective and unenforceable until Mississippi obtains administrative or judicial preclearance. J.S. App. 22a-23a, 36a-37a.

ARGUMENT

A. The District Court's interpretation of § 5 of the Voting Rights Act is consistent with decisions of the Court and the objectives of the Act.

The District Court's decision in Dupree II is a straightforward application of Clark vs. Roemer. The District Court's holding that the State failed to identify with specificity the voting change for which it sought preclearance does not depart from the Court's precedent or create a conflict with a decision from another circuit. The decision does not undermine the process for administrative preclearance because the Justice Department's position prevailed in the District Court. The District Court's decision in Dupree II is so obviously correct that it should be summarily affirmed.

The argument advanced by the Appellants and the dissenting judge in Dupree II would significantly reduce the responsibility of jurisdictions covered by the Voting Rights Act to identify clearly the voting changes submitted to the Attorney General for preclearance. The relaxation of that burden on submitting jurisdictions would "subvert the efficacy of administrative preclearance under § 5." Clark vs. Roemer, 500 U.S. at 655. Ultimately, the purpose envisioned by Congress for administrative preclearance -- providing states with an expeditious method of having nondiscriminatory voting laws implemented without undue delay -- would be disserved.

Since Allen vs. State Bd. of Elections, 393 U.S. 544 (1969), the Court has interpreted the Voting Rights Act to require that a state submit its voting changes to the Attorney General in an "unambiguous and recordable manner." Id. at 571; see United States vs. Board of Comm'rs, 435 U.S. 110, 136 (1978) ("the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him"). The regulations governing § 5 submissions have always contained a similar requirement. City of Rome vs. United States, 446 U.S. 156, 169 n.6 (1980).

In McCain vs. Lybrand, 465 U.S. 236 (1984), the Court provided direction on this issue, and the principles articulated in that decision were reaffirmed in Clark vs. Roemer.

> We made clear [in McCain] that the submission of legislation for administrative preclearance under § 5 defines the scope of the preclearance request. Under normal circumstances, a submission pertains only to identified changes in that legislation. We established also that any ambiguity in the scope of a preclearance request must be resolved against the submitting authority.

500 U.S. at 656 (citations omitted). In reversing the district court's holding that the Attorney General's preclearance of certain identified voting changes constituted preclearance of other related but unidentified voting changes, the Court in Clark reiterated the importance of specificity in the state's submission: The state "must identify with specificity each change that it wishes the Attorney General to consider." Id.

at 658. The Court also reaffirmed the presumption established in McCain that the Attorney General will review only the voting changes specifically described in the state's submission. Id. at 657.

In light of Clark, the District Court in Dupree II correctly held that the State did not properly submit the repealer of § 37-7-611 to the Attorney General in 1986 when it submitted other voting changes. The submission of the Uniform School Law in 1986 did not contain an explanation of the process by which city school district boundaries automatically expand to encompass territory in an adjacent school district after an annexation by its parent city. Nor did the 1986 submission indicate that this process was repealed by § 47 of the Uniform School Law. Moreover, the submission is utterly silent about any voting change effected by the repeal of § 37-7-611.

The Appellants contend the discussion of § 37-7-103 in § 52 of the State's submission put the Attorney General on notice that this statute was designed to replace the automatic extension policy of § 37-7-611 and serve as the sole method of altering school district boundaries. The State, however, did not identify the amendment of § 37-7-103 in this manner in the submission. The discussion of amended § 37-7-103 reveals only that any school district could voluntarily agree with any other school district to a revision of the boundaries of the districts. J.S. App. 83a. Thus, the Appellants' position is contrary to Clark: "A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices." 500 U.S. at 658 (quoting McCain).

The Appellants also point to the statements that the Uniform School Law was submitted "in its entirety" and that "the complete act is submitted for review." The use of these phrases, they argue, made the submission unambiguous. These phases do not identify any voting change, much less suggest that the State intended § 37-7-103 to replace § 37-7-611. As the Solicitor General noted in the appeal of Dupree I, it is doubtful the State "intended to submit the Uniform School Law 'in its entirety,' since most of its 203 sections have nothing to do with voting." Br. p.17 n.13. A clear statement that voluminous legislation is submitted "in its entirety" does not satisfy Clark's requirement that a state clearly identify each voting change in its submission.

The Appellants contend that the bare citation in the looseleaf booklet of § 37-7-611 and twenty-two other statutes dealing with the creation and operation of city school districts suffices for a proper submission of the voting change effected by the repeal of § 37-7-611. In other words, the Appellants suggest that, although the State did not identify or explain the automatic extension policy in § 47 or elsewhere in the submission, the Attorney General should have understood that the State intended to change this policy by including § 37-7-611 in a list of repealed statutes in § 47. Their argument is plausible only if the Attorney General was duty bound to retrieve, review and study the more than 100 statutes, including § 37-7-611, listed, without elaboration, as having been repealed in the 1986 submission.

The Court in Clark vs. Roemer expressly rejected the view of § 5 pressed by the Appellants and the dissent below. A state's obligation to identify with specificity each voting change is not a favor bestowed on the Attorney General. Noting the thousands of voting changes reviewed annually by the Attorney General, Clark requires that before a state's

voting change can be enforced, the state must "identify, submit, and receive approval for" the change. 500 U.S. at 658. Requiring the Attorney General to conduct independent research to determine whether a submission contained unidentified voting changes "would add to the Attorney General's already redoubtable obligations." Id.

Today, virtually all voting changes are submitted to the Attorney General for preclearance because of the cost and time constraints in litigating in the District of Columbia District Court. By allowing for administrative preclearance, however, "Congress in no way intended that the substantive protections of § 5 be sacrificed in the name of expediency." McCain, 465 U.S. at 246. Under either method of preclearance, the covered jurisdiction bears the burden of proving that the change in voting does not have a discriminatory purpose or effect, and in both instances "federal officials are confronted with the same 'difficult substantive issue.'" Id. at 247 (quoting Allen, 393 U.S. at 558). In the light of the reliance on administrative preclearance, Clark emphasized the necessity that the State identify each change so the Attorney General can perform her duties under § 5. 500 U.S. at 658.

The Appellants' position would permit a state to claim that the submission of an act is complete and unambiguous, even without specifically identifying each voting change sought to be reviewed, as long as the State includes the catch-all phrase "the complete act is submitted for review." In response, the Attorney General would likely interpose an objection rather than risk approving a discriminatory voting change not identified in the submission but otherwise a part of the "complete act" submitted for review. This response, however, might well delay "the implementation of validly enacted, nondiscriminatory state

legislation," a primary objective of administrative preclearance. See Morris vs. Gressette, 432 U.S. 491, 503 (1977).[5] Although such a response by the Attorney General would be the most prudent exercise of his responsibilities, it "would only add acrimony to the administration of § 5." Georgia vs. United States, 411 U.S. 526, 540-41 (1973).

In the context of judicial preclearance, a covered jurisdiction could not argue that the District of Columbia District Court approved a voting change that was not identified in the complaint or litigated at trial. To hold a state to a less demanding standard in seeking administrative preclearance would render the declaratory judgment route superfluous. Cf. id. at 538 ("Any less stringent standard [for the burden of proof] might well have rendered the formal declaratory judgment procedure a dead letter by making available to covered States a far smoother path to clearance.").

The Appellants also construct an argument on the regulation (§ 51.35) in effect in 1986 that required the Attorney General to request additional information if he considered the State's July 1986 submission to be incomplete. J.S. App. 226a. The Appellants' position is wrong for two reasons. First, the Appellants presume the Attorney General considered the State's submission to present the entire Uniform School Law for approval. To the contrary, it is clear the Attorney General considered only the thirteen specifically identified voting changes to be before

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[5] The Appellants' reliance on Morris is misplaced. The issue presented in this appeal--whether a voting change was properly submitted to the Attorney General--was not present in Morris. The submission in Morris was complete and unambiguous. 432 U.S. at 502, 504 & n.19.

him for review. This view of the submission is confirmed by the Attorney General's August 29, 1986 response in which he referred to the "voting changes . . . identified" in the State's submission. J.S. App. 156a.

Second, the Appellants' reliance on the lack of a request for additional information reflects a flawed perception of the purpose of the regulation, which allows the 60-day period for action to be suspended by a request for additional information. "The judgment that the Attorney General must make is a difficult and complex one, and no one would argue that it should be made without adequate information." Georgia vs. United States, 411 U.S. at 540. The regulation enables the Attorney General to make an informed decision by requesting additional information relevant to the changes identified in the initial submission. The regulation is not a mechanism for the Attorney General to ferret out other potential voting changes a state neglects to identify. A state knows better than anyone what it wishes precleared and the burden of uncovering voting changes in a submission should not be, as the Appellants suggest, the responsibility of the Attorney General.

B. The remedy imposed by the District Court for the violation of § 5 is consistent with the Court's precedent and the purposes of the Voting Rights Act.

The Appellants contend the District Court failed to issue a "specific, equitable" and "appropriate" remedy. No. 94-66 J.S. p.26; No. 94-82 J.S. p.12. The District Court enjoined the enforcement of the repealer of § 37-7-611 until the State complies with the preclearance requirements of the Voting Rights Act. J.S. App. 22a-23a, 36a-37a. This remedy is entirely consistent with the remedy either affirmed or mandated by the Court in prior § 5 cases, including Clark

vs. Roemer, which stated: "If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes." 500 U.S. at 652-53; see, e.g., Dougherty County Bd. of Educ. vs. White, 439 U.S. 32, 36 (1978); Berry vs. Doles, 438 U.S. 190, 191 (1978) (per curiam); Georgia vs. United States, 411 U.S. at 541; Perkins vs. Matthews, 400 U.S. 379, 397 (1971); Allen vs. State Bd. of Elections, 393 U.S. at 572.[6]

The Appellants argue that McCain vs. Lybrand "emphasized the [District Court's] duty to adopt voting remedies by making . . . suggestions" such as the Court did in that case. No. 94-66 J.S. p.28. They misread McCain. The portion of McCain cited by the Appellants relates to an identification of voting changes effected by a state statute, not proposed remedies available to the district court. 465 U.S. at 250 n.17. The parties in McCain stipulated that submission of the voting changes was required; thus, "the parties understandably have made little effort to define precisely the nature of the changes in elections practices made by the [state statute] which required preclearance." Id. Noting that the parties agreed on one particular change, the

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[6] The "confusion", "chao[s]" and "doubt" purportedly created by the remedy in Dupree II is more imagined than real. See No. 94-66 J.S. pp.26, 29; No. 94-82 J.S. p.12. The Plaintiffs (Appellees here) did not request the District Court to modify school district boundary lines. That issue, as Forrest County and the State acknowledge, is presently before the court that oversees the Hattiesburg School District's desegregation order. See No. 94-66 J.S. p.29 n.10. The Appellants are parties to that desegregation case and each has filed pleadings opposing any modification of school district boundaries.

Court "suggested" several other voting changes made by the state statute. Id.; see id. at 239-40 (explaining the voting practices in existence prior to enactment of the statute under review). These changes were not, as the Appellants contend, "suggestions" for the district court to consider or implement on remand as part of a remedy. Instead, they were changes made by the state to its voting laws.

Clark vs. Roemer reaffirmed that the "local district court is in a better position than this Court to fashion relief, because the district court is more familiar with the nuances of the local situation." 500 U.S. at 659. (quotations omitted). In granting relief, the district court "should adopt a remedy that in all the circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner and with least offense to its provisions." Id. at 660. The Appellants raised on several occasions in the District Court the same arguments pressed now on appeal. The District Court concluded that "the most equitable and practicable" remedy was to enjoin the repealer of § 37-7-611 until the State complies with § 5.

The remedy proposed by the Appellants in the District Court called for school district boundaries to remain unaffected by Dupree II and to preclude the newly annexed residents of the City of Hattiesburg from voting in county school board elections. This suggested remedy is neither equitable nor practicable. It deprives voters in the county school district of the right to vote for county school board members who have the power, among others, to determine the amount of taxes imposed on residents of the county school district. See Miss. Code Ann. § 37-57-105 (procedure for raising revenue from property taxes imposed on residents of school district). In addition, the Appellants' proposed remedy does not overcome the objection made by

the Attorney General to the repealer of § 37-7-611. The residents of the county school district would still indirectly select city school board members by participating in city elections. J.S. 185a.

In attacking the District Court's remedy, the Appellants emphasize the Mississippi Supreme Court's decision in Greenville Public School Dist. vs. Western Line Public School Dist., 575 So. 2d 956 (Miss. 1990), cert. denied, ___ U.S. ___, 117 L. Ed. 2d 649 (1991), which held that, even if the repealer of § 37-7-611 was not precleared, the amendment to § 37-7-103 repealed § 37-7-611 by implication under state rules of statutory construction. The Appellants contend the District Court in Dupree II should have deferred to the state supreme court's holding, No. 94-82 J.S. pp. 16-18, and "recognized that § 37-7-103 must supersede § 37-7-611," No. 94-66 J.S. p.25.

The District Court correctly rejected this contention, holding that "even if Section 52 in effect amounted to a repeal of § 37-7-611 by operation of state law, that fact was not submitted to the Attorney General in 1986 nor reviewed by him as such." J.S. App. 21a n.10. If the State of Mississippi desires to repeal § 37-7-611 and, as a result, effect a change in its voting laws, the preclearance requirements of § 5 must be satisfied, regardless whether the repeal arises from legislative action or by judicial decree. See Hathorn vs. Lovorn, 457 U.S. 255, 269 n.23 (1982); McDaniel vs. Sanchez, 452 U.S. 130, 153 (1981). The State's discussion of the amendment to § 37-7-103 did not identify any attendant change in the State's policy regarding the effect on school district boundaries after an annexation. Therefore, the Attorney General did not preclear the amendment to § 37-7-103 as a replacement for § 37-7-611.

In summary, Dupree II correctly applied Clark vs. Roemer and prohibited the State from enforcing the repealer of § 37-7-611 until the State receives either administrative or judicial preclearance. Dupree II upheld the Attorney General's objection because the State did not specifically identify the voting change effected by the repealer in the 1986 submission of the Uniform School Law. The District Court's decision is correct and further argument is unnecessary.[7]

CONCLUSION

For these reasons, the District Court's decision should be summarily affirmed.

RESPECTFULLY SUBMITTED,

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[7] The Appellants raise several questions concerning standing and the proper scope and application of § 5. No. 94-82 J.S. pp.10-16, 19-20. Dupree I decided these questions against the Appellants and no appeal was taken. Moreover, the District Court's resolution of these issues does not present a substantial question.